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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re D.P. et al., Persons Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

M.B. et al.,

Defendants and Appellants;

D.P.,

Appellant.

G045818

(Super. Ct. Nos. DP015851,
DP015852, DP015853,
DP015854 & DP015855)

O P I N I O N

Appeals from an order of the Superior Court of Orange County,
Cheryl L. Leininger, Judge. Affirmed.

Pamela Rae Tripp, under appointment by the Court of Appeal, for
Defendant and Appellant M.B.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant R.A.

Marsha F. Levine, under appointment by the Court of Appeal, for Minor and Appellant D.P.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Debbie Torrez, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minors I.B., J.S., L.B., and R.B.

* * *

INTRODUCTION

M.B. (Mother) and Mother's eldest child, D.P. (now 12 years old), appeal following an order terminating Mother's parental rights regarding now 11-year-old I.B., 10-year-old J.S., seven-year-old L.B., and six-year-old R.B. (collectively referred to as the siblings). R.A., the presumed father of L.B. and R.B. (Father), has appealed from the same order which terminated his parental rights as to L.B. and R.B. Father has filed a letter brief stating that he "joins in and adopts by reference each and every argument" contained in Mother's and D.P.'s appellate briefs to the extent "they benefit his interests . . . pursuant to rule 8.200(a)(5) of the California Rules of Court." He further asserts that in the event this court reverses the juvenile court's order terminating parental rights as to Mother, then the order terminating his parental rights as to L.B. and R.B. must also be reversed.

In this appeal, Mother contends the juvenile court erred by finding (1) the siblings adoptable; (2) the parent-child relationship exception to the termination of parental rights under Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i) inapplicable; and (3) the sibling bond exception to the termination of parental rights under section 366.26, subdivision (c)(1)(B)(v) (the sibling bond exception) inapplicable. (All further statutory references are to the Welfare and

Institutions Code unless otherwise specified.) D.P. solely contends the juvenile court erred by failing to find the sibling bond exception applicable.

We affirm. Substantial evidence supports the juvenile court's finding the siblings were adoptable. Substantial evidence shows Mother did not regularly visit the siblings as required under the parent-child relationship exception. When Mother did visit with the siblings, her interactions with them were generally positive, but Mother did not show that severing her relationship with them would deprive them of a "substantial, positive emotional attachment such that the child[ren] would be greatly harmed" (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575). Substantial evidence also supports the juvenile court's finding the sibling bond exception did not apply.

BACKGROUND¹

I.

THE JUVENILE COURT SUSTAINS THE AMENDED JUVENILE DEPENDENCY PETITION.

In August 2007, the Orange County Social Services Agency (SSA) filed a juvenile dependency petition which, as amended in October 2007 (the petition), alleged that D.P. and the siblings came within the jurisdiction of the juvenile court under section 300, subdivision (b) (failure to protect). Mother and Father each pleaded nolo contendere to the allegations of the petition; D.P.'s father submitted on the petition.

The petition alleged that since February 2007, Mother failed to provide D.P. and the siblings sufficient food and stable housing. On "numerous unspecified occasions," Mother asked D.P. and I.B.'s elementary school staff for food because of her limited income. Since May 2007 until the petition was filed, Mother and Father were homeless. The family moved from hotel to hotel or Mother and Father would sleep in a

¹ References to Father in this section are limited to those that provide context or are relevant to reviewing whether the juvenile court erred by finding the parent-child relationship exception inapplicable as to Mother.

vehicle while D.P. and the siblings stayed with the maternal grandmother in one bedroom along with the maternal grandmother and her seven-year-old son.

The petition alleged Mother failed to ensure that D.P. and I.B. attended school on a regular and consistent basis, as evidenced by their numerous tardies and absences. On “numerous unspecified occasions since February, 2007,” Mother failed to meet D.P. and I.B. at the school bus, which resulted in D.P. and I.B. being returned to the school because they could not be released to a parent or caretaker. On one such occasion, the petition stated Mother could not walk downstairs to meet the school bus because of back pain and stated she would sue the school or the school district if she fell and injured herself.

On August 20, 2007, Mother did not pick up then eight-year-old D.P. and six-year-old I.B. from school, and did not to make alternate arrangements. The Orange County Sheriff’s Department was contacted, and D.P. and I.B. were detained and transported to Orangewood Children’s Home. That same day, at an unspecified time, Mother suffered from a panic attack, blacked out, and fell down to the ground while walking down the street with then five-year-old J.S., two-year-old L.B., and one-year-old R.B. Police officers responded to the scene, and Mother was transported to the hospital where she complained of pain in her leg; she left the hospital after refusing medical care. J.S.’s, L.B.’s and R.B.’s appearance “demonstrated the parents[’] negligence as to meeting the children’s basic needs for food, clothing and appropriate hygiene.” J.S., L.B., and R.B. were detained and taken to Orangewood Children’s Home.

The petition further alleged Mother suffered from an undiagnosed developmental disability and/or mental health issues and that Mother had stated she attended special education classes as a child. The petition asserted Mother stated she “cannot hold a job for more than three weeks” and has been “told that she is too slow and let go.” The petition stated Mother’s developmental disability and/or mental health issues impair her ability to provide safe, effective, and appropriate care for her children.

The petition stated Mother “has received assistance in services from numerous community agencies and programs, to include food and food vouchers, clothing for the children, gas money, referrals for rental assistance, and bus transportation for the children. [Mother] has been offered Voluntary Family Services in the past by [SSA] and refused said services. Despite the numerous community resources provided to [Mother], she has failed to be able to provide for the children’s basic needs for food, clothing, and shelter on a regular and consistent basis.” Mother failed to take the Prozac medication that had been prescribed for her and failed to seek treatment to address her symptoms of mental illness.

Father has a criminal history, including an arrest for battery. I.B. and J.S.’s father, whose whereabouts were unknown, had not provided for the basic needs of or maintained a relationship with I.B. and J.S., and also had a criminal history, including an arrest, citation, or detention for driving under the influence. The whereabouts of D.P.’s father were also unknown and he similarly failed to provide for her basic needs or maintain a relationship with her.

On August 23, 2007, Father was found by the court to be the presumed father of L.B and R.B.

On August 28, 2007, D.P. and the siblings were placed in a foster home.

In October 2007, the juvenile court found the allegations of the petition true by a preponderance of the evidence and declared D.P. and the siblings dependent children of the juvenile court. The court approved a case plan and visitation plan for Mother and Father.

II.

D.P. AND THE SIBLINGS ARE PLACED WITH MOTHER ON A TRIAL BASIS.

On September 5, 2008, D.P. and the siblings were placed with Mother and Father for a 60-day trial visit. In December 2008, Father left the family and the children remained placed with Mother.

In June 2009, concerns again arose about Mother's ability to care for her children. Mother was unable to obtain or maintain employment. D.P. and the siblings often wore "'filthy' clothing." The conditions in the home "bordered on unfit or unsafe, with dirt, food, dirty dishes, and garbage on the floors and counters," which might have contributed to D.P.'s and J.S.'s medical conditions of asthma and eczema and "possibly the overall health of the family." Mother struggled to meet her children's medical needs as evidenced by the number of missed appointments.

The juvenile court ordered an Evidence Code section 730 evaluation of Mother, but she was unwilling or unable to complete the evaluation. She continued to be resistant to services offered to her, including therapy for herself and D.P. Mother consistently misplaced or lost personal items and important information.

Counsel representing D.P. and the siblings informed the juvenile court that she intended to file a petition requesting that D.P. and the siblings be removed from Mother's care. The court informed Mother that if she did not comply with the court order to complete the Evidence Code section 730 evaluation, D.P. and the siblings would be removed and possibly adopted.

III.

SSA FILES THE SUPPLEMENTAL DEPENDENCY PETITION IN NOVEMBER 2009; THE JUVENILE COURT FINDS THE ALLEGATIONS OF THE SUPPLEMENTAL PETITION TRUE, AND SETS A PERMANENCY HEARING.

D.P. and the siblings were again detained on November 10, 2009, and SSA filed a supplemental dependency petition on November 13. In addition to reiterating the allegations of the petition, the supplemental petition stated that Mother had failed to comply with her case plan in that she had refused or had been resistant to mental health treatment, as demonstrated by her frequent missed and/or rescheduled appointments. The supplemental petition further stated Mother's lack of compliance caused Mother to neglect her children's basic needs, such as clothing, food, and shelter.

Such negligence, according to the supplemental petition, was demonstrated by numerous school absences and tardies, notwithstanding the case plan requirement that Mother ensure D.P. and the siblings regularly and consistently attend school. On October 28, 2009, Mother failed to pick up then eight-year-old I.B. after school had ended (causing I.B. to sob in the school office). Mother refused to pick up I.B., and informed school personnel that I.B. could walk home, which was approximately one mile away and would require her to cross a busy intersection by herself.

The supplemental petition also stated that Mother had received “Wraparound” services and other referrals for community providers to assist in providing for food, clothing, shelter, and transportation. Mother nevertheless was unable to provide for her children’s basic needs for food, clothing, and shelter on a regular and consistent basis.

In addition, the supplemental petition stated that on February 23, 2009, and again on March 22, 2009, Mother and Father were involved in domestic violence in the presence of the children. Father’s then current whereabouts were unknown.

At the jurisdiction hearing, the juvenile court found the allegations of the supplemental petition true by a preponderance of the evidence. At the disposition hearing, the court ordered that D.P. and the siblings remain dependent children of the juvenile court. The court also found that reunification services did not need to be provided and set a permanency hearing. The court approved a visitation plan for Mother, which offered her weekly visits contingent on her confirming her attendance at visits in advance. The court’s minute order stated that if Mother missed two visits in a row, then visitation would be limited to one time per month.

D.P. and the siblings were placed with the prospective adoptive parents in November 2009.

IV.

THE PERMANENCY HEARING REPORT AND SUBSEQUENT ADDENDUM REPORTS

In July 2010, SSA filed a permanency hearing report in which SSA recommended that the juvenile court find D.P. and the siblings adoptable, order Mother's parental rights terminated, and find that the termination of parental rights would not be detrimental to D.P. and the siblings. Before the permanency hearing, SSA filed several subsequent addendum reports. Because parental rights were not terminated as to D.P., this background part focuses on the siblings. We summarize the contents of SSA's reports as follows.

A.

The Permanency Hearing Report

The permanency hearing report contained a comprehensive summary of the basis for the social worker's conclusion that each of the siblings was adoptable. The siblings were each reported to be developmentally on target in all areas and without any developmental concerns at the time of the report. They participated in age-appropriate extracurricular and social activities.

I.B. was described as a "very friendly and outgoing" child who "makes and maintains friendships rather easily." She had "easily transitioned into her foster family and appear[ed] to be attached to her foster parents." J.S. was described as polite with an easygoing personality. It was noted he "seem[ed] to have developed a special relationship with the prospective adoptive father and often want[ed] to play games or watch movies with him." L.B. "developed a close relationship with his prospective adoptive family and enjoy[ed] spending time with them." L.B., however, was struggling with school, and with anger and anxiety issues. The permanency hearing report noted L.B. "appear[ed] to have adjusted to the foster home, though he appear[ed] to be struggling with an emotional and/or psychological transition" which manifested itself with some aggressive behavior. R.B. was described "to be a normal, content and

well-adjusted child. He can usually be observed smiling or laughing. He [wa]s cooperative and ha[d] a very playful personality. He enjoy[ed] being the center of attention.” R.B. had a “very close and positive relationship with his prospective adoptive family” and was “especially close with the prospective adoptive father.” R.B.’s siblings nicknamed him “little Joe” after the prospective adoptive father. R.B. “had ‘formed healthy attachments’ to his prospective adoptive parents.” He also had “come to love and interact with” the prospective adoptive mother as “his own mother.”

The permanency hearing report contained the determination by SSA that “based on the children’s characteristics/attributes, it was likely that the children would be adopted. The children were all placed together with the prospective adoptive parents on November 11, 2009. The prospective adoptive parents have welcomed the children into their family and have included the children in family activities and vacations. The prospective adoptive parents have advocated for educational services for the children.” The report stated the prospective adoptive parents were also familiar with the adoption process as they had previously adopted children and were in the process of finalizing another adoption. It also stated the prospective adoptive parents provided D.P. and the siblings with a safe, loving, and stable home, and had been open to considering permanency early on in the placement. They stated they were looking forward to adding D.P. and the siblings to their family and “have shown that they are capable of providing the children . . . with appropriate care.” The report further stated: “[I]t appears the children are adoptable and their current caregivers wish to adopt the children should they become legally freed. In such case, adoption would be the most appropriate plan for the children.”

The permanency hearing report noted, however, that D.P. had been very resistant to adoption, but had more recently been warming up to the idea. D.P. had been previously coaching the siblings to say they did not want to be adopted and wanted to live with Mother.

As for visitation, the permanency hearing report stated Mother missed several visits, and other visits had been cancelled due to Mother's failure to confirm her attendance in advance or her tardiness.

Mother arrived late for her visit on December 4, 2009, during which time she interacted with D.P. and I.B. while J.S., L.B., and R.B. played with toys. During another visit, it was reported that Mother "continue[d] to have difficulty handling all five children during the visits." Mother also favored D.P. and spent the majority of time with her. I.B. would notice Mother's attention on D.P. and would not appear happy. During one visit, J.S. and L.B. expressed affection to Mother at the beginning of the visit and thereafter played with toys, while R.B. followed L.B. around and played with him throughout the visit.

Mother missed the December 21, 2009 visit due to illness and a lack of transportation. She did not show up for the confirmed February 1, 2010 visit. Mother did not confirm the February 8 visit. She attended the February 17 visit. Even though Mother confirmed the February 22 visit, she missed it because she woke up late. Mother missed visits on March 1, 8, 15, 22, and 29, and April 5 and 26. Several of those visits were not confirmed by Mother.

When Mother did not show up for the March 15, 2010 visit, D.P. was discouraged and "shut down," and would not engage in conversation with the social worker. I.B. was quiet as usual, but appeared to be sad. J.S. was quiet as usual and L.B. looked depressed and appeared to hold back tears. R.B. was sad and quiet, and did not attempt to play. Mother arrived as D.P. and the siblings were leaving. Although Mother shouted, sobbed, and demanded to speak to a supervisor, she was told there would be no visit that day.

Mother attended the visit on April 12, 2010, during which time Mother offered most of her attention to D.P., "[a] little" attention to I.B. and J.S., and "almost none" to L.B. and R.B. She brought junk food and the visit was spent eating and talking.

Mother arrived 45 minutes late for the May 3, 2010 visit. She brought no food. She spent most of the visit with D.P. and I.B. Mother set no limits for her children. She played games with them, but she did not pay attention to their safety. Mother kissed them goodbye at the end of the visit.

A social worker observed, “[Mother] does not pay attention to their surroundings and cannot monitor all of them at the same time. She does not notice when they are engaged in potentially dangerous activities; she would rather have them happy. She cannot maintain her emotional composure; because she cannot regulate her emotions, she also cannot help the children regulate theirs. . . . D[P.] often takes care of [Mother] and helps her do many things, including answering the questionnaire about L[B.’s] birth and development. It is clear that D[P.] feels a burden to help, protect, and parent [Mother], and [Mother] not only expects her to, but encourages her to. I[B.] is tempted to do the same things as well. Almost the entirety of the visit was inappropriate. The roles that [Mother] allows and encourages the children to have with her are inappropriate and unhealthy. She does not appear capable of modeling appropriate behavior to them and usually does not set boundaries or rules with them.”

Mother did not confirm either the May 10 or the May 17, 2010 visit. The May 24 visit was “much better” than the previous one as Mother did not break rules, such as sharing secrets with D.P., crying, and failing to be on time.

Mother did not confirm the visits scheduled for June 2, 7, and 14, 2010, and had no telephone contact with her children during the entire month of June.

Mother confirmed the July 19, 2010 visit but then requested to reschedule because she had to appear in court for criminal charges related to her June 30 arrest for eight felony counts including possession of a controlled substance, acts constituting forgery, possession of forged paper, burglary, receiving stolen property, and possession of a completed check with the intent to defraud. Mother admitted that she had started using drugs to make the emotional pain go away. The visit was rescheduled for July 22,

conditioned on Mother confirming that visit before 10:00 a.m.; Mother forgot to confirm the visit before 10:00 a.m.

B.

Summary of Subsequent Addendum Reports

SSA subsequently filed addendum reports which provided the juvenile court with the following additional information before the permanency hearing. D.P.'s loyalty to Mother was impeding her ability to move forward and made it difficult for her to accept the prospect of adoption. D.P. told the siblings things that undermined the prospective adoptive mother, and the siblings' behavior in the prospective adoptive parents' home began to deteriorate. D.P., described as a sweet child who cares about the siblings and wants to take care of them, began acting aggressively toward classmates and the siblings. D.P. was placed in a respite home for two weeks. When she returned to the prospective adoptive parents' home, she was disrespectful and isolated herself from the prospective adoptive parents and the siblings. Although the prospective adoptive parents originally sought to adopt D.P. and the siblings, in light of D.P.'s poor attachment to the prospective adoptive parents and efforts to sabotage the siblings' attachment to them, they were currently seeking to adopt only the siblings.

Mother was incarcerated on November 1, 2010 and released in January 2011; she entered a drug and alcohol rehabilitation program. She admitted "relapsing" in January and February. She forgot to attend group meetings and fell asleep during other meetings on several occasions.

As of February 15, 2011, J.S., L.B., and R.B. were struggling in developing a healthy bond with the prospective adoptive parents because of their "great deal of loyalty" to Mother; their continued visits with Mother seemed to confuse them. As of April 14, 2011, D.P. was scheduled to be removed from the prospective adoptive parents' home because she was adamant she did not wish to be adopted and continued to attempt to sabotage the siblings from further attaching to the prospective adoptive parents.

In an addendum report dated April 27, 2011, SSA changed its recommendation only as to D.P. to recommend that termination of parental rights would be detrimental to D.P. From January 24 through April 18, 2011, Mother attended two out of the five scheduled visits. During those visits, Mother focused on D.P., I.B., and J.S., and, during one visit, appeared to be exchanging secret messages with D.P., using a cell phone, a DVD, and/or pictures.

On May 9, 2011, the assigned social worker was informed Mother had been admitted into an inpatient drug and alcohol program as required by her probation. On June 14, D.P. was removed from the prospective adoptive parents' home and placed at Orangewood Children's Home. The prospective adoptive parents reported that within hours of D.P. leaving their home, L.B. and R.B. began calling the prospective adoptive parents "mom" and "dad" without prompting. They further reported the siblings had "changed, so very much" and were "much more relaxed and seem[ed] at peace." J.S. and I.B. stated that they would miss D.P., but they were "okay" with her not being there.

In a report dated June 21, 2011, J.S. was described as very friendly and cooperative. R.B. viewed his foster family as "his 'family'" and was "cooperative and friendly." L.B. and R.B. were described as "both adoptable[,] . . . young, healthy, attractive, and active young boys" who had the positive qualities sought by adoptive families and would be placed in another home should that become necessary. The prospective adoptive parents committed to adopting the siblings, notwithstanding challenges arising from L.B.'s and R.B.'s behavioral problems.

Mother visited with D.P. and the siblings on June 30, 2011. Mother interacted with D.P. as a "friend"; J.S. and L.B. had no interaction with Mother for most of the visit. R.B. was uncomfortable when Mother carried him, and he was offered less than five minutes of her attention. I.B. (then 10 years old) also was uncomfortable when Mother held her like a baby. D.P. interacted with the siblings like a parent, bringing them

gifts, commenting on how tall they had become, and asking whether they had lunch that day.

In a “15 Day Review Report” dated July 29, 2011, the social worker stated D.P. was placed in a new foster home and that D.P. and the foster parent were both pleased with the placement.

On August 22, 2011, Mother visited D.P. and the siblings and greeted them with hugs and kisses. She brought food she had prepared. D.P. whispered to I.B., “[d]on’t get adopted.” During Mother’s visit on August 29, Mother and D.P. became aggressive with the monitor over a disagreement about the visitation rules. R.B. “took a popsicle and was whacking everyone on the head with it,” including the monitor. Mother “did not appear to notice that he was smacking others, but when she did she laughed.”

V.

THE PERMANENCY HEARING

A.

D.P., I.B., J.S., R.B., and Mother Testify at the Permanency Hearing.

At the permanency hearing in September 2011, D.P., I.B., J.S., and R.B. testified. Mother also testified.

Then 10-year-old I.B. testified that she understood that if she was adopted, she would live with the prospective adoptive parents until she was 18 years old and that she was “okay with that.” I.B. said if she could not see Mother or D.P. anymore, she would be a “little bit sad but . . . okay.” I.B. was not sure whether she would like more time to visit with Mother and sometimes does not want to go to visits with Mother and D.P.

Then nine-year-old J.S. testified he looked forward to visits with Mother, but stated he would like to be adopted because of the prospective adoptive parents. J.S. stated, “I like the house over there and they take good care of me” and stated he wants to live there “forever.” He testified he would want to live with Mother if he could live with

“anyone right now.” J.S. also testified that if he was not allowed to see Mother anymore, he would “feel kind of sad” and “would miss her” and that he felt the same way about D.P. J.S. stated he wanted to be adopted even if it meant he could not see Mother anymore.

Then five-year-old R.B. testified that if he could live with anyone, he would want to live with the prospective adoptive mother until he grows up. He calls the prospective adoptive parents “[m]om” and “[d]ad.” He loved Mother and D.P., and would feel sad if he could not see them anymore.

Then 12-year-old D.P. testified that during visits, J.S., L.B., and R.B. hug her and tell her they miss and love her. D.P. hugs them back and tells them she loves them too. She testified about how she had always lived with the siblings until she went to the respite home. D.P. described the activities she shared with the siblings, their discussions about school, and how the siblings would come to her for help. She testified that she did not want to be adopted and did not want the siblings adopted either. She testified that she believed “we are better off with my mom, my family.” She testified that I.B. and J.S. have stated they would want continued contact with her.

Mother testified that she missed many visits. She testified that she and the siblings were affectionate during visits and that they played and read during visits. She stated she loved her children and did not agree with termination of her parental rights because “nobody is going to watch [her] kids the way [she] do[es, or]. . . care or give [her] kids the love [she] give[s] them.” She stated she deserves another chance.

B.

The Juvenile Court Finds the Siblings Adoptable, Finds Neither the Parent-child Relationship Exception nor the Sibling Bond Exception Applicable, and Orders the Termination of Parental Rights as to the Siblings.

At the permanency hearing, the juvenile court found by clear and convincing evidence as to D.P. that adoption and termination of parental rights were not

in D.P.'s best interests. The court found appropriate the permanent plan of placement with a caregiver with the specific goal of independent living. The court ordered weekly visitation between Mother and D.P.

The court found it likely each of the siblings would be adopted. The court ordered parental rights terminated and the siblings placed for adoption. The court found inapplicable the provisions of section 366.26, subdivision (c)(1)(A) and/or section 366.26, subdivision (c)(1)(B)(i), (ii), (iii), (iv), (v), and (vi) and found termination of parental rights and adoption in the siblings' best interests.

Mother, D.P., and Father each filed a timely notice of appeal.

DISCUSSION

I.

SUBSTANTIAL EVIDENCE SHOWS THE SIBLINGS WERE ADOPTABLE.

“The juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time. [Citations.] In making this determination, the juvenile court must focus on the child, and whether the child's age, physical condition, and emotional state may make it difficult to find an adoptive family. [Citations.] In reviewing the juvenile court's order, we determine whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that [the child] was likely to be adopted within a reasonable time. [Citations.]” (*In re Erik P.* (2002) 104 Cal.App.4th 395, 400; see also *In re Zeth S.* (2003) 31 Cal.4th 396, 406.) We give the juvenile court's finding of adoptability the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of affirming. (*In re Autumn H., supra*, 27 Cal.App.4th 567, 576.)

At the permanency hearing, the juvenile court explained why the siblings were adoptable, as follows: “[T]he children have testified in this case. The court has seen that they are all cute and adorable children. They are reported to be healthy and

active and enjoy age-appropriate activities. They have many positive qualities adoptive families seek. [¶] There have been some concerns about developmental delays for the two youngest boys, but the boys are now receiving services from regional center to bridge that gap. Also, there have been some concerns about behavioral issues with the two youngest boys. However, some of those issues have resolved with the change of dynamics in the adoptive home where the children have been for I think close to two years now, certainly over a year, and that was when D[P.] moved out. [¶] Also the boys seem to stabilize between visits with mother. The [siblings] are happy living with the foster parents and they continue to improve. The prospective adoptive parents love the [siblings] and are committed to the[m] and have expressed a desire to adopt all four [of the siblings] and keep the siblings together. [¶] The court believes that the foster parents have committed fully to adopting all of the [siblings] and keeping them together. Even if there were not a family committed to adopting at this time, the court finds that with the many positive qualities and attributes of the [siblings], they would be adoptable generally.”

In addition to the court’s observations of the siblings at the permanency hearing, the court’s finding that the siblings were adoptable is supported by substantial evidence contained in the reports filed by SSA before the permanency hearing. The reports show the siblings are generally on target developmentally, and they participate in age-appropriate extracurricular activities.² The prospective adoptive parents, with whom

² The record shows there was a period of time in which L.B. and R.B. had behavioral problems in the prospective adoptive parents’ home. Their behavior was attributable to their confusion in reconciling their “great deal of loyalty to” Mother with their efforts to develop a healthy bond with the prospective adoptive parents. Their behavioral problems temporarily threatened their permanent placement with the prospective adoptive parents. The prospective adoptive parents reported that within hours of D.P.’s removal from the prospective adoptive parents’ home, L.B. and R.B.’s demeanor “changed, so very much.” They appeared “much more relaxed and seem[ed] at peace.” The prospective adoptive parents thereafter committed to adopting the siblings.

the siblings have lived since November 2009, have committed to adopting the siblings, being fully aware of their needs. Even if for some reason the prospective adoptive parents were no longer able to adopt the siblings, sufficient evidence shows the siblings possess positive qualities sought by adoptive families, which would enable them to be placed in another adoptive home.

We find no error.

II.

THE JUVENILE COURT DID NOT ERR BY FINDING THE PARENT-CHILD RELATIONSHIP EXCEPTION UNDER SECTION 366.26, SUBDIVISION (c)(1)(B)(i) INAPPLICABLE.

Mother contends the juvenile court erred by failing to find the parent-child relationship exception to the termination of parental rights applicable. Section 366.26, subdivision (c)(1)(B)(i) allows the juvenile court to decline to terminate parental rights over an adoptable child if it finds “a compelling reason for determining that termination would be detrimental to the child” because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” Mother had the burden of proving both prongs of the parent-child relationship exception were satisfied. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 949.) We consider whether substantial evidence supports the juvenile court’s determination the parent-child relationship exception did not apply. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 424-425.)³

At the permanency hearing, the juvenile court found that termination of parental rights as to the siblings would not be detrimental to them. As to the first prong

³ In *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351, the appellate court acknowledged that courts have “routinely applied the substantial evidence test” to the juvenile court’s finding regarding the applicability of the parent-child relationship exception. The appellate court in *In re Jasmine D.* stated that the abuse of discretion standard is a more appropriate standard even though “[t]he practical differences between the two standards of review are not significant.” (*Ibid.*) Under either standard, Mother’s argument fails for the same reasons.

of the parent-child relationship exception, the court found that after Mother was released from custody in February 2010, she visited the siblings to some degree, “[h]owever, overall the court does not believe that [Mother] has visited consistently and regularly.” Substantial evidence supports the court’s finding. SSA’s reports show that since the supplemental petition was filed, Mother missed many visits for a vast array of reasons, including that she forgot to confirm visits, overslept, was incarcerated, and was enrolled in a residential treatment program.

As to the second prong, the juvenile court found that although Mother’s visits with the siblings were pleasant and enjoyable and, notwithstanding their understanding Mother is their biological mother, the court stated it “believe[d] that she does not occupy a parental role and is more of a friendly visitor than a parent.”

In *In re Autumn H.*, *supra*, 27 Cal.App.4th at pages 575-576, the court stated: “In the context of the dependency scheme prescribed by the Legislature, we interpret the ‘benefit from continuing the [parent/child] relationship’ exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated. [¶] Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult’s attention to the child’s needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive,

emotional attachment from child to parent. [¶] At the time the court makes its determination, the parent and child have been in the dependency process for 12 months or longer, during which time the nature and extent of the particular relationship should be apparent. Social workers, interim caretakers and health professionals will have observed the parent and child interact and provided information to the court. The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs are some of the variables which logically affect a parent/child bond."

Here, the juvenile court further explained its finding of the inapplicability of the parent-child relationship exception, stating: "[M]other's unresolved problems, instability, and noncompliance with the case plan over the last four years has resulted in causing uncertainty, confusion, anxiety, emotional trauma and stress and disappointments for the [siblings]. [¶] The [siblings] appear to have genuine affection for their mother and those who testified state that they do love their mother, but the [siblings'] interaction at visits have been somewhat superficial and limited. [¶] The four children have stated they wish to live with and be adopted by the foster family. The [siblings] call their foster parents mom and dad. . . . R[B.] and L[B.] see their foster parents as their family. The reports and testimony support that for all of the [siblings]."

The juvenile court also stated: "According to the reports and based on their testimony, the foster parents are the ones who provide comfort and support for them. While the [siblings] know their mother is in fact their mother, and they state they love their mother, and as the court has said—but as the court has said, I do not believe that mother plays a parental role in their lives and any benefits to the [siblings] would be incidental. [¶] The court has no doubt that the mother has great love in her heart for [the siblings] and that the [siblings] have affection for their mother. But [the siblings] need

permanency in their lives. They need love and nurturing and stability in a healthy, secure, safe, stable home that the foster parents can and do provide. [¶] When weighing the benefits of maintaining a parental relationship and continuing the strength and quality of that relationship against the strength and quality of their relationship with their foster parents and the benefits of an adoptive home, there is no doubt that an adoptive home far outweighs the benefits of maintaining the parental relationship.”

More than substantial evidence supports the juvenile court’s finding Mother failed to carry her burden of showing the siblings would benefit from continuing their relationship with her. While the record shows Mother loves the siblings and they love her, Mother’s visits and contacts with the siblings have not continued or developed a significant, positive, emotional attachment from child to parent. The record shows the prospective adoptive parents have occupied a parental role in the siblings’ lives and have provided them a stable, nurturing home. I.B., J.S. and R.B. each testified that they desired to be adopted by the prospective adoptive parents, further supporting the finding that the termination of Mother’s parental rights would not deprive them of a “substantial, positive emotional attachment such that [they] would be greatly harmed.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) As substantial evidence supports the juvenile court’s finding the parent-child relationship exception was inapplicable, we find no error.

III.

SUBSTANTIAL EVIDENCE SUPPORTS THE JUVENILE COURT’S FINDING THE SIBLING BOND EXCEPTION UNDER SECTION 366.26, SUBDIVISION (c)(1)(B)(v) DID NOT APPLY.

Mother and D.P. argue the sibling bond exception under section 366.26, subdivision (c)(1)(B)(v) should apply because of the siblings’ relationships with D.P.⁴

⁴ In the respondent’s brief, SSA argues that D.P. does not have legal standing to appeal the termination of Mother’s parental rights as to the siblings. We do not need to address this argument because even assuming D.P. has legal standing, as discussed *post*,

Section 366.26, subdivision (c)(1)(B)(v) creates an exception to termination of parental rights if “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” We also review this issue for substantial evidence. (*In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1017.)

At the permanency hearing, the juvenile court explained its finding that the sibling bond exception did not apply, stating in part: “In spite of their affection for D[P.], all of the siblings indicate that they want to be adopted and want to live with their foster parents. All of the [siblings] are happy with the foster parents and they see the foster parents as their parental foundation and as their family. [¶] The court must decide this issue from the perspective of the siblings and not from D[P.]’s perspective. In looking at it from their position and all the long-term benefits, including the emotional interest they gain from the permanency and stability and love, and all of the other reasons stated above that they receive by the adoption—by adoption, those things far outweigh the sibling relationship in this case.”

There is no doubt the record establishes that D.P. loves the siblings and that they love her. But the juvenile court properly considered the siblings’ best interests in finding the sibling bond exception did not apply. Unlike the siblings, D.P. was adamant about not being adopted. Substantial evidence shows the siblings are happy in the prospective adoptive parents’ home, the prospective adoptive parents wish to adopt the siblings, and the siblings desire to be so adopted. As expressed by I.B., J.S. and R.B. at

substantial evidence supports the juvenile court’s finding the sibling bond exception did not apply.

the permanency hearing, there is no doubt the siblings will be sad to no longer have contact with D.P. The record does not show, however, that ongoing contact between the siblings and D.P. would outweigh the benefit of permanence through adoption the siblings stand to gain and desire to have.

Substantial evidence, therefore, supports the juvenile court's finding that the sibling bond exception did not apply.

DISPOSITION

The order is affirmed.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.